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DISTRICT II

November 24, 2021

To:

Hon. Peter L. Grimm
Circuit Court Judge
Electronic Notice

Ramona Geib
Clerk of Circuit Court
Fond du Lac County
Electronic Notice

Kathilyne Grotelueschen
Electronic Notice

Winn S. Collins
Electronic Notice

Eric Toney
Electronic Notice

Darnell M. Simmons
1037 North Keeler
Chicago, IL 60651

You are hereby notified that the Court has entered the following opinion and order:

2020AP1115-CRNM State of Wisconsin v. Darnell M. Simmons (L.C. #2018CF82)

Before Gundrum, P.J., Reilly and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Attorney Kelsey Loshaw, appointed counsel for Darnell M. Simmons, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Loshaw was later replaced by Kathilyne Grotelueschen. Counsel provided Simmons with a copy of the report, and both counsel and this court advised him of his right to file a response. Simmons has not responded. We conclude that this case is appropriate for summary

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal. We affirm.

Simmons pled no contest to one count of fleeing a traffic officer. The court withheld sentence, placed Simmons on probation for two years, and imposed a fine of \$2,500.

The no-merit report addresses whether Simmons' plea was entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with all but one of the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Simmons was waiving, and other matters.

As to the one exception, the no-merit report acknowledges that the court did not provide the required immigration warning to Simmons, but states that Simmons "asserts no challenge to the court's failure to give this warning." The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report addresses whether the sentence is within the legal maximum and whether the court erroneously exercised its sentencing discretion. The probation term and fine are within the legal maximums. The standards for the circuit court and this court on discretionary sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kathilynne Grotelueschen is relieved of further representation of Darnell M. Simmons in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals